

REMARKS

Claims 1-24 are pending in the Application and all have been rejected in the Office action mailed December 26, 2007. Claims 1, 11, and 19 are independent claims. Claims 2-10, 12-18, and 20-24 depend from independent claims 1, 11, and 19, respectively. The independent claims 1, 11, and 19 have been amended. The dependent claim 16 is amended for antecedent basis. No new matter is introduced by the amendments.

Support for the amendments to claims 1, 11, 16, and 19 can be found at least with respect to paragraphs [0012] – [0015] and [0023] – [0028] of the Specification.

The Applicant respectfully requests reconsideration of the pending claims 1-24 in light of the following remarks.

Office Action's Response to Arguments

The Office Action states on page 2 that “[t]he Examiner thanks for the Applicant pointing out the difference between the two methods. However, said limitation about “each pass associated with its own bank order ...” in the specification, as the Applicant indicated, has not been cited in the claims and thus said limitation is not considered.”

The Applicant agrees with the Office Action that the limitation “each pass associated with its own bank order ...” differentiates Applicant’s method from the method of the cited art Rao *et al.*, US 7,082,549 B2 (hereinafter “Rao”).

While the Applicant believes that previous claims are not anticipated by Rao, the Applicant amends claims 1, 11, 16, and 19 in light of this statement by the statement in the Office Action to further expedite prosecution.

Rejections of Claims

Claims 1-24 were rejected under 35 U.S.C. §102(e), as being anticipated by Rao. Without conceding that Rao qualifies as prior art under 35 U.S.C. § 102(e), the Applicant respectfully traverses the rejection.

With regard to the anticipation rejections, MPEP 2131 states, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

MPEP 707(a)(a) states:

On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

Accordingly, the Applicant assumes that this Office Action is based on a thorough study of the Application.

Rejection of claims 1-10 Under 35 U.S.C. §102

With regard to claim 1, the Applicant respectfully submits that Rao does not appear to teach or suggest each and every element of the Applicant's amended claim 1. For example, the amended claim 1 states in part that “an update agent capable of updating the at least one of a firmware component and a software component employing an update process that comprises a plurality of transform passes, **wherein each transform pass is associated with its own memory bank order.**”

Rao, however, discloses a method that “select[s] one of the plurality of banks, duplicating the selected bank to a working bank, copying the selected bank to a backup

bank, and converting the contents of the working bank from the first code version to a second code version ... The method may repeat the prior actions until each of the plurality of banks has been updated." Column 2, lines 22-34 (Brief Summary of the Invention). See also, FIGs. 3-6; column 9, lines 1-7, 47-67; column 10, lines 1-6, 12-21, 32-53.

The Applicant respectfully submits that "an update agent capable of updating the at least one of a firmware component and a software component employing an update process that comprises a plurality of transform passes, **wherein each transform pass is associated with its own memory bank order**" is not the same as a method that "select[s] one of the plurality of banks, duplicating the selected bank to a working bank, copying the selected bank to a backup bank, and converting the contents of the working bank from the first code version to a second code version ... The method may repeat the prior actions until each of the plurality of banks has been updated."

The Office Action rejects claim 1 by citing Fig. 2, step 207-223 and the related text in the specification as anticipating claim 1 in the previous Office action response filed on October 24, 2007 (the "October Response"). Page 5. Although the Applicant traverses the rejection of claim 1, the Applicant amended claim 1 to further expedite prosecution of this Application.

The Applicant respectfully submits that Rao does not anticipate the amended claim 1, which states in part that "an update agent capable of updating the at least one of a firmware component and a software component employing an update process that comprises a plurality of transform passes, **wherein each transform pass is associated with its own memory bank order**." As can be seen below, the text describing FIG. 2 does not disclose "an update process that comprises a plurality of transform passes, **wherein each transform pass is associated with its own memory bank order**."

FIG. 2 is a flow chart illustrating an exemplary method of startup of a mobile handset such as the mobile handset 107 of FIG. 1, in which a fault tolerant update agent is invoked to conduct firmware/software update operations, in accordance with the present invention. The processing starts when the mobile handset is powered up or rebooted (block 207). Next, the initialization or boot sequence is executed (block 209). A determination is then made whether an update of the firmware/software of the mobile

handset is to be conducted (block 211). For example, in one embodiment, a status table may be accessed to determine if a flag in the status table indicates a need to update firmware/software using an update package previously downloaded and available in the mobile handset.

If it is determined that an update is not necessary, then the regular startup procedure of the mobile handset is executed (block 225) and startup processing terminates (block 221). If, however, it is determined that an update is necessary, then the point where the fault-tolerant update agent should resume the update process is determined (block 213). For example, that point may be at the beginning, for a newly begun update operation, or at a specific bank of non-volatile memory, in the case of a previously initiated but interrupted update operation. Next, the various operations related to the fault-tolerant update process are conducted by the update agent (block 215). Finally, the update agent initiates a reboot of the mobile handset (block 223).

Therefore, the Applicant believes that claim 1 is allowable over Rao, for at least the reasons set forth above. The Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. §102(e) be withdrawn.

The Applicant respectfully submits that because claims 2-10 depend from allowable independent claim 1, claims 2-10 are also allowable, for at least the reasons set forth above. Accordingly, the Applicant respectfully requests that the rejection of claims 2-10 under 35 U.S.C. §102(e) be withdrawn.

Rejection of claims 11-18 Under 35 U.S.C. §102

The Office Action cites FIG. 1, item 117 and related text in Rao as anticipating claim 11 in the October Response, and accordingly rejects claim 11. Page 10. Although the Applicant traverses the rejection of claim 11, the Applicant amends claim 11 to further expedite prosecution of this Application.

Accordingly, with regard to claim 11, the Applicant respectfully submits that Rao does not appear to teach or suggest each and every element of the Applicant's amended claim 11. A portion of the amended claim 11 discloses "an update agent capable of updating at least a portion of the at least one of firmware and a plurality of software components, the update agent employing an update process that comprises a plurality of transform passes, **wherein each of the plurality of transform passes is**

associated with its own memory bank order, and wherein each transform pass updates the plurality of memory banks in the associated memory bank order for that transform pass."

The Applicant was not able to find with respect to FIG. 1, item 117, any disclosure of the amended claim 11 that states "an update agent capable of updating at least a portion of the at least one of firmware and a plurality of software components, the update agent employing an update process that comprises a plurality of transform passes, **wherein each of the plurality of transform passes is associated with its own memory bank order, and wherein each transform pass updates the plurality of memory banks in the associated memory bank order for that transform pass.**" The Applicant submits that Rao does not anticipate the amended claim 11 for at least these reasons.

Therefore, the Applicant believes that claim 11 is allowable over Rao, for at least the reasons set forth above. The Applicant respectfully requests that the rejection of claim 11 under 35 U.S.C. §102(e) be withdrawn.

The Applicant respectfully submits that because claims 12-18 depend from allowable independent claim 11, claims 12-18 are also allowable, for at least the reasons set forth above. Accordingly, the Applicant respectfully requests that the rejection of claims 12-18 under 35 U.S.C. §102(e) be withdrawn.

Rejection of claims 19-24 Under 35 U.S.C. §102

The Office Action cites FIG. 6, step 609 and related text in Rao as anticipating claim 19 in the October Response, and accordingly rejects claim 19. Page 14. Although the Applicant traverses the rejection of claim 19, the Applicant amends claim 19 to further expedite prosecution of this Application.

With regard to claim 19, the Applicant respectfully submits that Rao does not appear to teach or suggest each and every element of the Applicant's amended claim 19. For example, a portion of the amended claim 19 discloses "determining as a recovery transform pass, one of the plurality of transform passes interrupted during the

update process, wherein each of the plurality of transform passes is associated with its own memory bank order."

Step 609 states "Next, the addresses or locations of the working bank and the backup bank are determined (block 609)." Accordingly, Rao's limitation is a single bank at a time. Accordingly, the Applicant respectfully submits that Rao does not anticipate the amended claim 19, which discloses "determining as a recovery transform pass, one of the plurality of transform passes interrupted during the update process, **wherein each of the plurality of transform passes is associated with its own memory bank order.**"

Accordingly, for at least the reasons stated above, the Applicant respectfully submits that claim 19 is allowable over Rao. The Applicant respectfully requests that the rejection of claim 19 under 35 U.S.C. §102(e) be withdrawn.

The Applicant respectfully submits that because claims 20-24 depend from allowable independent claim 19, claims 20-24 are also allowable, for at least the reasons set forth above. Accordingly, the Applicant respectfully requests that the rejection of claims 20-24 under 35 U.S.C. §102(e) be withdrawn.

Conclusion

In general, the Office Action makes various statements regarding claims 1-24 and the cited reference that are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

The Applicant believes that all of pending claims 1-24 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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